



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

December 10, 2002

Mr. Bryn Meredith  
Taylor Olson Adkins Sralia Elam  
6000 Western Place Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107-4654

OR2002-7027

Dear Mr. Meredith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173374.

The City of Alvarado (the "city"), which you represent, received a written request for eight categories of information pertaining to the city's fire marshal and city code fire inspections and citations. Because you do not argue that the information sought in request items 6, 7, or 8 are excepted from public disclosure, we assume that the city has released that information to the requestor; if it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302. You contend that the remaining requested information is excepted from public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

You state that the information at issue pertains to a pending criminal prosecution in the city's municipal court that pertains to certain alleged violations of the city's fire code. Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Additionally, you state that the city fire marshall whose personnel records are at issue will be the main witness in the pending criminal prosecution and that the personnel records relate to the pending prosecution because the fire marshal "is the first and only witness" for the prosecution and the personnel records "are directly related to [the fire marshal's] credibility" as a witness. Based on your

representations, we conclude that the city may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code, with the following exception.

Section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Consequently, the city must release these types of information in accordance with *Houston Chronicle*.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/RWP/lmt

Ref: ID# 173374

Enc: Submitted documents

c: Ms. JoAnn Wright  
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(w/o enclosures)